

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES LYNN O'HINES, CDCR # K-86989,
Plaintiff,
vs.
WARDEN, A.S.P.C., *et al.*,
Defendants.

Civil No. 08cv0726 BEN (BLM)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION WITHOUT
PREJUDICE**

Plaintiff James Lynn O'Hines, an inmate currently incarcerated at the Arizona State Prison Complex in Florence, Arizona, has filed what appears to be a civil rights Complaint. Dkt. No. 1 (Apr. 18, 2008). Instead of paying the \$350.00 filing fee required under 28 U.S.C. § 1914(a), he moves to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Dkt. No. 2 (Apr. 23, 2008). For the reasons set forth below, the Court denies the motion and dismisses this action without prejudice.

DISCUSSION

I. Legal Standard

Section 1915 of Title 28 of the United States Code allows indigent litigants to pursue civil litigation *in forma pauperis*. 28 U.S.C. § 1915(a)(2). The Prison Litigation Reform Act, however, amends section 1915 to include a "three strikes" rule. 28 U.S.C. § 1915(g); *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) ("[Section 1915(g)] is commonly known as the 'three strikes' provision."). "Strikes" refer to prior cases or appeals that were (1) brought while the plaintiff was a prisoner; and (2) dismissed as frivolous or malicious or for failure to state a claim. 28 U.S.C. § 1915(g).

Under this rule, prisoners who have three or more strikes may not proceed *in forma pauperis*, unless they make a plausible allegation that they faced imminent danger of serious physical injury at the time of filing. *Id.*; *Andrews v. Cervantes*, 493 F.3d 1047, 1051-52 (9th Cir. 2007) (noting section 1915(g)'s exception).

II. Application of 28 U.S.C. § 1915(g)

O'Hines' six-page handwritten Complaint – containing three pages of drawings and scribbled notes – is virtually impossible to decipher. Dkt. No. 1 at 4, 5, 8. His allegations under the heading "Cause of Action" fail to shed any light on the factual basis of his claims:

...

Why? Child Custody and Los Angeles Brentwood Homocides Racially Motivated from 1982-1989-1996-1999 to 2004 to 2008 "Seminole"

...

Prisoner Plaintiff Rights Violation(s)? The Rights to remain free from association of state local officers practicing oppression for Religious, Racial, or Sexual reasons and to not be denied access to the courts for compensation fair and impartial venue by a Judge, Jury nor be denied access to attorney.

Id. at 2. Construed liberally, the Complaint alleges only monetary damage and loss of custodial rights. *See id.* at 6. Nowhere in the Complaint does O'Hines suggest that he faced "imminent danger of serious physical injury" at the time of filing. Accordingly, section 1915(g) applies to this Complaint; O'Hines may not proceed *in forma pauperis* if he has three strikes or more. 28 U.S.C. § 1915(g).

To determine the number of O'Hines' strikes, the Court may take notice of proceedings in all courts, "if those proceedings have a direct relation to matters at issue." *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). Here, the Court takes judicial notice of O'Hines previous filings in the Eastern and Southern Districts of California. These filings reveal that while incarcerated, O'Hines has been a frequent litigant, using aliases such as "Jim Hines" and "Jackson Malloy," and that at least seven of his actions were dismissed as frivolous or for failure to state a claim:

- (1) *Hines v. City of San Diego Police Dep't*, No. 00cv0969 K (LAB) (S.D. Cal. June 21, 1999) (failure to state a claim);
- (2) *Malloy v. Kowolski*, No. 00cv1186 W (LAB) (S.D. Cal. June 30, 2000) (frivolous);
- (3) *Hines v. Hissong*, No. 00cv1177 JM (NLS) (S.D. Cal. July 14, 2000) (frivolous);

- 1 (4) *Malloy v. Corcoran Prison*, No. 00cv5660 REC (DLB) (E.D. Cal. Sept. 25, 2000)
 2 (frivolous);
 3 (5) *Hines v. Jaffe*, No. 00cv2078 W (CGA) (S.D. Cal. Nov. 7, 2000) (frivolous);
 4 (6) *Malloy v. Galaza*, No. 00cv5647 AWI (HGB) (E.D. Cal. Dec. 13, 2000) (failure to state
 5 a claim); and
 6 (7) *Malloy v. Corcoran Prison*, No. 99cv6647 REC (SMS) (E.D. Cal. Dec. 15, 2000)
 7 (frivolous and failure to state a claim).

8 Accordingly, O'Hines has accumulated more than three strikes under section 1915(g). Because in this
 9 action, he has failed to allege that he faced imminent danger of serious physical injury, he cannot
 10 proceed *in forma pauperis*. See *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (“[C]ourt
 11 permission to proceed [*in forma pauperis*] is itself a matter of privilege and not right.”).

12 CONCLUSION AND ORDER

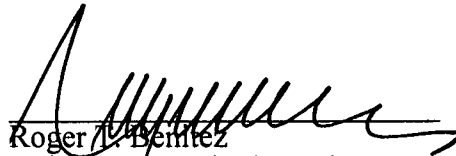
13 For the reasons set forth above, the Court denies O'Hines' motion to proceed *in forma pauperis*
 14 and dismisses this action without prejudice pursuant to 28 U.S.C. § 1914(a) for failure to prepay the
 15 \$350.00 filing fee. The Court reminds O'Hines that while he is incarcerated, he may not proceed *in*
 16 *forma pauperis* in any federal court pursuant to 28 U.S.C. § 1915(a), unless he is in “imminent danger
 17 of serious physical injury.” 28 U.S.C. § 1915(g).

18 The Court further certifies that any *in forma pauperis* appeal from this Order would not be taken
 19 “in good faith” pursuant to 28 U.S.C. § 1915(a)(3). See *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir.
 20 1977) (indigent appellant is permitted to proceed *in forma pauperis* on appeal only if appeal would not
 21 be frivolous).

22 The Clerk shall close the file.

23 IT IS SO ORDERED.

24 Dated: May 8, 2008

25 
 26 Roger L. Benitez
 27 United States District Judge
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